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RUEHDK/AMEMBASSY DAKAR 2562  
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STATE PASS TO USAID FOR L.DOBBS AND E.LOKEN

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SUBJECT: MDC MP CONVICTED FOR OBSTRUCTING JUSTICE; OTHERS STILL FACE CHARGES

11. (U) SUMMARY: The advent of the transitional government has failed to stem political prosecutions of abductees as well as MPs. This week Matthias Mlambo, MDC-T MP for Chipinge East, was jailed for an effective seven months while his colleague Meki Makuyana, MDC-T MP for Chipinge South, also faces possible imprisonment if convicted on separate charges of kidnapping. Mlambo's lawyers are filing an appeal, but he may lose his seat in the House of Assembly if he misses more than 21 consecutive sessions of Parliament and Parliament approves a resolution to declare the seat vacant. These cases are two of several cases still pending against MDC MPs. END SUMMARY.

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MP Mlambo Convicted of Obstruction of Justice  
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12. (U) On May 11, MDC-T MP for Chipinge East, Matthias Mlambo was convicted of obstructing justice and was sentenced to 10 months imprisonment with hard labor; three months were suspended on condition of good behavior.

13. (SBU) The charges stem from an incident on April 10 when Mlambo was attending the funeral of an MDC member in Chipinge, in southeastern Zimbabwe. According to Mlambo's lawyer, a ZANU-PF member arrived at the funeral wearing ZANU-PF regalia, a dispute ensued, and MDC members beat him up. A police officer then arrived and fired one shot, resulting in further pandemonium. After the burial Mlambo went to the police and reported the police officer whom he considered to have acted recklessly. Realizing that his conduct had been reported to his superiors, the police officer who had discharged his firearm filed a complaint against Mlambo on April 112. The officer alleged that Mlambo had prevented him from arresting the MDC youths who had beaten up the ZANU-PF youth by refusing to identify the youths in question. Mlambo maintained that

he had not seen the persons who had beaten up the ZANU-PF youth.

¶4. (U) Mlambo was arrested and released on bail on May 2. At the completion of his trial on May 11 in the Chipinge Magistrate's court, he was convicted and sentenced to 10 months imprisonment with three months suspended for good behavior. His lawyers have filed an appeal and applied for bail pending appeal. The application for bail will be heard on May 15. The state is not opposing bail.

¶5. (U) To date, Mlambo's criminal report against the police officer has not been investigated by the police.

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MP Makuyana Charged with Kidnapping  
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¶6. (U) Separately, Chipinge South MP Makuyana faces charges of kidnapping. On May 11, the state closed its case in his trial in the same court in Chipinge. The defense indicated that it will Qthe same court in Chipinge. The defense indicated that it will apply for discharge at the close of the state case. The magistrate directed both lawyers to file written arguments by May 15 and said he will hand down his ruling by May 27. Pending judgment, Makuyana was released on bail. The state did not oppose the bail application.

¶7. (U) Makuyana's troubles started on December 3, 2008. According to his lawyer Langton Mhungu, he had been addressing a development meeting when ZANU-PF members started their own meeting about a hundred meters away. ZANU-PF members became violent and stabbed one

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of the MDC members. The MDC then effected a citizen's arrest of the perpetrator and filed the report with the police. In turn, local ZANU-PF members reported Makuyana to the police on January 10, 2009 for kidnapping.

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MDC's Parliamentary Majority Safe for Now  
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¶8. (SBU) We spoke with Eric Matinenga, a respected lawyer and Minister for Parliamentary and Constitutional Affairs (MDC-T), who indicated that, although the convictions are worrisome, they won't have an immediate impact on the MDC's majority in parliament. A conviction could cause an MP to lose his seat through one of two possibilities. First, if Mlambo misses more than 21 consecutive sessions while he is in jail, and Parliament resolves to declare the seat vacant, he could lose his seat. Alternatively, if an MP is sentenced to more than six months in prison without the option of a fine, he could lose his seat. While the sentence is under appeal, as in Mlambo's case, the MP maintains his seat. Under the Global Political Agreement (GPA), any parliamentary seat that is lost will be replaced by an MP of the same party, unless the seat is contested by a party or independent candidate not bound by the GPA.

¶9. (SBU) Notably, when we called Matinenga on May 11 to ask him about the cases in Chipinge, he was not yet aware of them, particularly Mlambo's conviction. He further asked us for the name and contact information for the MPs' lawyer. When we talked to him again on May 12, Matinenga said the MDC did not yet have an official response to the two court cases. Matinenga himself is awaiting judgment (expected May 26 in Mutare) on charges of inciting violence during the inter-election period in 2008.

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COMMENT  
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¶10. (SBU) As the transitional government lurches along, the courts continue to be the preferred venue for targeting MDC members and sympathizers through trumped up charges. By removing battles to the legal system, ZANU-PF can cleverly claim that "justice is taking its course." These two cases, like many others, arose after MPs attempted to engage local police to report crimes or other behavior

and found themselves incarcerated and accused of the very acts they sought to report. As with other cases, these two arose because of actors within ZANU-PF controlled entities: the police, the Ministry of Justice, and the Attorney General's office. While the MDC's parliamentary majority appears safe, such cases continue to undermine the spirit of and support for the transitional "inclusive" government. END COMMENT.

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